



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

MAR 17 2005

Ref: 8ENF-W-NP

CERTIFIED MAIL 7003-2260-0001-7779-1602

RETURN RECEIPT REQUESTED

Gil Haugan, Jr., Registered Agent for
Haugan (Gil) Construction, Inc.
200 E. 60th Street North
P.O. Box 84430
Sioux Falls, South Dakota 57118-4430

Notice of Proposed Assessment of Civil Penalty
Permit No. SDR-10A778

Dear Mr. Haugan:

Enclosed is a document entitled Penalty Complaint and Notice of Opportunity for Hearing ("Complaint"). The United States Environmental Protection Agency ("EPA") is issuing this Complaint against Bethany Lutheran Home for the Aged and Gil Haugan Construction, Inc., ("Respondents") pursuant to section 309 of the Clean Water Act ("Act"), 33 U.S.C. § 1319. In the Complaint, EPA alleges that Respondents violated sections 301(a), 308(a), and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1318, and 1342(p) and the storm water requirements specified in South Dakota permit No. SDR-10A778. The Complaint proposes that a penalty of \$110,000 be assessed against Respondents for these violations. This Complaint is being sent under separate cover to Bethany Lutheran Home for the Aged.

You have the right to a hearing to contest the factual allegations in the Complaint or the appropriateness of the proposed penalty. We have enclosed a copy of 40 C.F.R. part 22, which identifies the procedures EPA follows in administrative civil penalty assessments.

If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Region VIII Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, Colorado 80202-2466

If you do not file an answer within 30 days [see 40 C.F.R. § 22.15(d)], you may be found in default. A default judgment may impose the full penalty proposed in the Complaint of \$110,000.

EPA encourages the consideration of Supplemental Environmental Projects (SEPs) in conjunction with civil penalties, in the settlement of civil enforcement cases. If you are interested in this possibility, we have enclosed a copy of the EPA policy that describes the possibilities and limitations of SEPs in such matters. An agreement to perform a SEP may result in a lower cash penalty amount.

EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations (See 40 C.F.R. § 22.18). If a mutually satisfactory settlement can be reached, it will be formalized in a consent agreement signed by you and the delegated authority for EPA. Upon final approval of the consent agreement by the Regional Judicial Officer, Respondents will be bound by the terms of the consent agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon civil penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA.

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet, containing information on compliance assistance resources and tools available to small businesses, is enclosed with this letter. SBREFA does not eliminate your responsibility to comply with the Act and respond to this Complaint.

If you have any questions regarding this letter, the enclosed Complaint, or any other matters pertinent to compliance with the Act, the most knowledgeable people on my staff regarding these matters are Jennifer Meints, Environmental Engineer, at (303) 312-6334 or Alicia N. Hoegh, Enforcement Attorney, at (303) 312-6876. If you are represented by an attorney, or to request a settlement conference, please call Alicia N. Hoegh. Please note that arranging for a settlement meeting does not relieve you of the need to file a timely answer to EPA's Complaint.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol Rushin".

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

1. Penalty Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice (40 C.F.R. Part 22)
3. Supplemental Environmental Projects Policy
4. Small Business Regulatory Enforcement and Fairness Act Information

cc: Tina Artemis, Regional Hearing Clerk
Jeanne Goodman, SDDENR
Kelli Buscher, SDDENR
Dennis Sever, Bethany Lutheran Home for the Aged



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

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Ref: 8ENF-W-NP

MAR 17 2005

CERTIFIED MAIL 7003-2260-0001-7779-1596

RETURN RECEIPT REQUESTED

Mr. Dennis Sever, Registered Agent for
Bethany Lutheran Home for the Aged
1901 South Holly
Sioux Falls, South Dakota 57105-2499

Notice of Proposed Assessment of Civil Penalty
Permit No. SDR-10A778

Dear Mr. Sever:

Enclosed is a document entitled Penalty Complaint and Notice of Opportunity for Hearing ("Complaint"). The United States Environmental Protection Agency ("EPA") is issuing this Complaint against Bethany Lutheran Home for the Aged and Gil Haugan Construction, Inc., ("Respondents") pursuant to section 309 of the Clean Water Act ("Act"), 33 U.S.C. § 1319. In the Complaint, EPA alleges that Respondents violated sections 301(a), 308(a), and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1318, and 1342(p) and the storm water requirements specified in South Dakota permit No. SDR-10A778. The Complaint proposes that a penalty of \$110,000 be assessed against Respondents for these violations. This Complaint is being sent under separate cover to Gil Haugan Construction, Inc.

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If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Region VIII Hearing Clerk at the following address:

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U.S. EPA, Region VIII
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EPA encourages the consideration of Supplemental Environmental Projects (SEPs) in conjunction with civil penalties, in the settlement of civil enforcement cases. If you are interested in this possibility, we have enclosed a copy of the EPA policy that describes the possibilities and limitations of SEPs in such matters. An agreement to perform a SEP may result in a lower cash penalty amount.

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A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet, containing information on compliance assistance resources and tools available to small businesses, is enclosed with this letter. SBREFA does not eliminate your responsibility to comply with the Act and respond to this Complaint.

If you have any questions regarding this letter, the enclosed Complaint, or any other matters pertinent to compliance with the Act, the most knowledgeable people on my staff regarding these matters are Jennifer Meints, Environmental Engineer, at (303) 312-6334 or Alicia N. Hoegh, Enforcement Attorney, at (303) 312-6876. If you are represented by an attorney, or to request a settlement conference, please call Alicia N. Hoegh. Please note that arranging for a settlement meeting does not relieve you of the need to file a timely answer to EPA's Complaint.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

1. Penalty Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice (40 C.F.R. Part 22)
3. Supplemental Environmental Projects Policy
4. Small Business Regulatory Enforcement and Fairness Act Information

cc: Tina Artemis, Regional Hearing Clerk
Jeanne Goodman, SDDENR
Kelli Buscher, SDDENR
Gil Haugan, Jr., Gil Haugan Construction Inc.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2005 MAR 18 AM 8:09

Docket No. **CWA-08-2005-0013**

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

Gil Haugan Construction, Inc. and
Bethany Lutheran Home For the Aged,

Respondents.

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**PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g). The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 122 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits or EPA regulations constitute violations of that section of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA official has been properly delegated the authority to issue this action. EPA has consulted with the State as required by the Act. 33 U.S.C. § 1319(g)(1).

3. EPA alleges that Respondents have violated the Act, permit and/or regulations and proposes the assessment of a civil penalty, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondents have the right to a public hearing before an administrative law judge to disagree with (1) any fact stated (alleged) by EPA in the complaint, (2) the grounds for any legal defense, or (3) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, Respondents must file a written answer (and one copy) with the Regional Hearing Clerk (999 18th Street; Suite 300 (8RC); Denver, Colorado 80202) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.

QUICK RESOLUTION

6. Respondents may resolve this proceeding at any time by paying the penalty amount proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondents' right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Alicia N. Hoegh, Enforcement Attorney, at [1-800-227-8917; extension 6876 or 303-312-6876] or the address below. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. In order to restore and maintain the integrity of the nation's water, section 301(a) of the Act prohibits the discharge of pollutants into navigable waters of the United States, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).

9. Section 402 of the Act establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA or State, to permit discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.

10. The Act requires that a discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of an NPDES permit. 33 U.S.C. § 1342(p).

11. The Act authorized, and EPA issued, regulations that further define requirements for NPDES permits for storm water discharges. 33 U.S.C. §§ 1318 and 1342(p) and 40 C.F.R. part 122.

12. EPA regulations define discharges associated with industrial activity to include construction activity. 40 C.F.R. § 122.26(b)(14).

13. Pursuant to 40 C.F.R. § 122.26(c), each person who discharges storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.

14. Respondent Gil Haugan Construction, Inc., is incorporated and doing business in the State of South Dakota as a commercial and industrial building contractor.

15. Respondent Bethany Lutheran Home For the Aged, is incorporated and doing business in the State of South Dakota as a skilled nursing care facility.

16. Respondents are a "person" within the meaning of section 502(5) of the Act and, therefore, subject to the requirements of the statute and regulations. 33 U.S.C. § 1362(5).

17. At all relevant times to this complaint, Respondents owned or were engaged in construction activities at a facility located in the southwest 1/4 of Section 36, Township 102 North, Range 48 West, in Minnehaha County, South Dakota, ("facility").

18. At all relevant times to this complaint, Respondents were engaged in an "industrial activity" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(14).

19. The run off and drainage from the facility is "storm water" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).

20. Storm water contains "pollutants" as defined by the Act. 33 U.S.C. § 1362(6).

21. The activities described in paragraph 17 of this complaint were performed using common earthmoving vehicles and equipment, including excavators, all of which were operated by Respondents and/or by one or more individuals on behalf of Respondents.

22. At all relevant times, the vehicles and equipment described in paragraph 21 of this complaint were a regulated "point source" within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23. Storm water runoff from the facility is the "discharge of a pollutant" as defined by § 502(12) of the Act and EPA regulations. 33 U.S.C. § 1362(12) and 40 C.F.R. § 122.2.

24. Storm water, snow melt, surface drainage and run off water leave Respondents' facility and flows to an unnamed tributary of Beaver Creek, which is tributary to the Big Sioux River.

25. The Big Sioux River is a "navigable water" and "waters of the United States," as defined by the Act and EPA regulations, respectively. 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

26. Section 301 of the Act and the storm water regulations at 40 C.F.R. §§ 122.21 and 122.26 require that a storm water permit be obtained for construction activity including clearing, grading and excavation that disturb at least five acres.

27. On June 7, 2002, Respondents commenced construction activities disturbing over five acres at the facility.

28. On July 2, 2002, an authorized South Dakota Department of Environment and Natural Resources (SDDENR) employee entered the facility with the consent of the Respondents to inspect the site for compliance with the statute, permit and regulations. The inspection revealed that Respondents failed to obtain coverage under SDDENR's general storm water permit prior to commencing construction activities. In addition, Respondents had not developed a storm water pollution prevention plan (SWPPP); installed and/or implemented Best Management Practices (BMPs) including sediment and erosion controls, permanent control measures (e.g., seeding and mulching) and temporary stabilization measures; and inspected and maintained the BMPs.

29. On July 10, 2002, Respondents submitted to the SDDENR a Notice of Intent (NOI) for coverage under SDDENR's General storm water permit.

30. On July 18, 2002, Bethany Lutheran Home for the Aged obtained coverage under SDDENR General Permit SDR-100000 and was assigned permit number SDR-10A778 and, therefore, was subject to the terms and conditions of the general permit until their Notice of Termination was received by SDDENR on May 17, 2004.

31. General Permit SDR-100000 required, among other things, that a person discharging pollutants develop and implement an adequate storm water pollution prevention plan (SWPPP), conduct regular specified storm water inspections and to document the inspections, and implement best management practices ("BMPs"). BMPs include structural controls (such as sediment ponds and silt fences) and management practices (such as a dedicated concrete washout area, street sweeping, and outlet protection).

32. Section 4.1 of General Permit SDR-100000 required that a SWPPP be developed prior to commencement of construction activity. Section 4.2.1(c) required that Respondents provide a description of the intended sequence of activities that disturb soils for major portion of the site.

33. On August 13, 2002, an authorized SDDENR employee entered the facility with the consent of the Respondents to conduct a follow-up inspection for compliance with the statute, permit and regulations. The inspection revealed that the Respondents failed to: develop a complete SWPPP; implement permanent control measures (e.g., seeding and mulching) and stabilization measures; and properly install and/or maintain sediment and erosion controls (BMPs).

34. On November 20, 2002, an authorized SDDENR employee entered the facility with the consent of the Respondents to conduct a follow-up inspection for compliance with the statute, permit and regulations. The inspection revealed that the Respondents failed to: develop a complete SWPPP; properly install and/or maintain sediment and erosion controls (BMPs); implement permanent control measures (e.g., seeding and mulching) and stabilization measures; inspect and/or maintain the BMPs; and minimize the discharge of sediment into the intermittent stream.

35. On May 28, 2003, an authorized SDDENR employee entered the facility with the consent of the Respondents to conduct an inspection to verify compliance with the statute, permit and regulations. The inspection revealed that the Respondents failed to: properly install and/or maintain sediment and erosion controls; prohibit non-storm water discharges onto the ground from concrete washout; implement permanent control measures (e.g., seeding and mulching) and implement stabilization measures; and, minimize the discharge of sediment into the intermittent stream.

COUNT ONE

(Failure to Obtain a permit)

36. At the time of the July 2, 2002 SDDENR inspection, Respondents failed to submit, prior to commencing construction activities, an NOI for coverage under SDDENR's General Permit SDR-100000 for storm water discharges associated with construction activities, or an application for coverage under an individual storm water permit.

37. Respondents' failure to apply for coverage under the SDDENR General Permit SDR-100000 or for coverage under an individual storm water permit constitutes a violation of the Clean Water Act. 33 U.S.C. §§ 1311, 1318 and 1342(p) and 40 C.F.R. §§ 122.21(b) and 122.26(c).

COUNT TWO
(Failure to Develop a SWPPP)

38. From July 18, 2002, the time Respondent obtained permit coverage, to July 31, 2002, the date Respondents first developed a SWPPP, Respondents failed to develop a SWPPP as required by SDDENR General Permit SDR-100000.

39. Respondents' failure to develop a SWPPP constitutes a violation of the Clean Water Act. 33 U.S.C. §§ 1311, 1318 and 1342(p).

COUNT THREE
(Failure to Develop a Complete SWPPP)

40. Respondents developed and submitted to SDDENR SWPPPs dated July 31, 2002, August 28, 2002, and February 13, 2003. None of the SWPPPs contained all of the information required under General Permit SDR-100000. One or more of the SWPPPs failed to contain the following: failed to identify on the site map potential pollution sources and information on areas of soil disturbance, direction of flow, or locations of major pollutant sources; failed to identify measures for spill prevention and response; failed to provide scheduling information for activities that disturb soils for major portions of the site; failed to identify outlet protection for BMPs; and failed to identify all areas disturbed by construction (near Highway 264).

41. Respondents' failure to develop a complete SWPPP as required by the permit constitutes a violation of the Clean Water Act. 33 U.S.C. §§ 1311, 1318 and 1342(p).

COUNT FOUR
(Failure to Install and/or Maintain BMPs)

42. At the time of SDDENR's August 13, 2002, November 20, 2002, and May 28, 2003 inspections, Respondents failed to install and/or maintain BMPs as required by the general permit. One or more of the inspections revealed the following inadequacies: failure to install and/or maintain sediment and erosion controls (BMPs), and failure to implement permanent control measures (e.g., seeding and mulching) and stabilization measures.

43. Respondents' failure to properly install and/or maintain BMPs constitutes violations of the Clean Water Act. 33 U.S.C. §§ 1311 and 1342(p).

COUNT FIVE
(Failure to Conduct and/or Maintain Records of Inspections)

44. At all relevant times of this complaint, Respondents failed to conduct inspections at the frequency required under General Permit SDR-100000 and/or a maintain records of the inspections.

45. Respondents' failure to conduct inspection and/or maintain records of inspections constitutes violations of the Clean Water Act. 33 U.S.C. §§ 1311, 1318 and 1342(p).

PROPOSED CIVIL PENALTY

46. Section 309(g) of the Act, 33 U.S.C. § 1319(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, and 40 C.F.R. parts 19 and 27 authorizes the EPA to assess a civil penalty of up to \$27,500 per day, for each violation of the Act occurring after January 30, 1997 and prior to March 15, 2004, and \$32,500 for each violation occurring on or after March 15, 2004. Section 309(g)(3) of the Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.

In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of \$110,000 be assessed against Respondents for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

On June 7, 2002, Respondents began ground disturbance at the facility. During the July 2, 2002 SDDENR inspection, the inspector found that the Respondents had not applied for coverage under South Dakota's general permit and a SWPPP had not been developed. After Respondents obtained a permit they developed and submitted 3 SWPPPs to SDDENR. Each of the SWPPPs were found to be incomplete as they did not contain all of the information required by the permit. The SDDENR inspections on July 2, 2002, August 18, 2002, November 20, 2002, and May 28, 2003 revealed that BMPs were not installed or being maintained. During the SDDENR inspections on July 2, 2002, August 18, 2002, November 20, 2002, and May 28, 2003, the inspector noted that storm water self-inspections had not been conducted and/or records documenting some of the inspections had not been maintained.

Prior Compliance History

This complaint is the first enforcement action EPA Region 8 has issued to Respondents for violations of the storm water regulations.

Degree of Culpability

On July 18, 2002, Respondents had a copy of the storm water permit and should have been aware of all the requirements therein. In addition, Respondents continued not to comply with the provisions of General Permit SDR-100000.

Economic Benefit

An economic benefit was experienced by Respondents for failure to comply with the storm water permit. Specifically, Respondents benefited by not spending or delaying the expenditure of the required funds to apply for a storm water permit, to develop a complete SWPPP, to install and maintain the appropriate BMPs, and to conduct storm water inspections beginning June 7, 2002.

Ability to Pay

EPA did not reduce the proposed penalty due to this factor but will consider any new information Respondents may present regarding Respondents' ability to pay the penalty proposed in this complaint.

Other Matters that Justice may Require

No adjustments made regarding these factors at this time.

47. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter, and present evidence in the event a hearing is held. 33 U.S.C. § 1319(g)(4).

48. The ALJ is not bound by EPA's penalty policy or the penalty proposed by EPA and may assess a penalty above the proposed amount, up to the \$27,500 per day per violation authorized in the statute.

To discuss settlement or ask any questions you may have about this case or process, please contact Alicia N. Hoegh, Enforcement Attorney, at 303-312-6876, or the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
999 18th Street, Suite 300 (ENF-L)
Denver, CO 80202

Date: 3/17/2005

By: Carol Rushin
Carol Rushin
Assistant Regional Administrator

In the Matter of: *Gil Haugan Construction, Inc., and Bethany Lutheran Home for the Aged, Inc.*
Docket No. CWA-08-2005-

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Penalty Complaint and Notice of Opportunity for Hearing was served this 18th day of March, 2005, as follows:

Copy, via first-class mail, certified return receipt requested, to

Mr. Dennis Sever, Registered Agent for
Bethany Lutheran Home for the Aged
1901 South Holly
Sioux Falls, South Dakota 57105-2499

And

Gil Haugan, Jr., Registered Agent for
Gil Haugan Construction, Inc.
200 E. 60th Street North
P.O. Box 84430
Sioux Falls, South Dakota 57118-4430

Date: March 18, 2005

Judith McTernan
Judith McTernan

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]
- 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
- 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.
- 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
- 22.44 [Reserved]
- 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.
- 22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

- 22.50 Scope of this subpart.
- 22.51 Presiding Officer.
- 22.52 Information exchange and discovery.

Authority: 7 U.S.C. 136f; 15 U.S.C. 2610(c), 2615(a) and 2647; 33 U.S.C. 1319(g), 1321(b)(6), 1342(a), 1415(a) and (f) and 1418; 42 U.S.C. 300g-3(g)(3)(B), 300h-2(c), 300j-6(a), 6912, 6925, 6928, 6945(c)(2), 6961, 6991b, 6991e, 7413(d), 7524(c), 7545(d), 7547(d), 7601, 7607(a), 9609, 11045, and 14304.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EC-P-1998-159

III-A-01

1st Page only

APR 10 1998

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of Final Supplemental Environmental Projects Policy

FROM: Steven A. Herman
Assistant Administrator

TO: Regional Administrators

I am pleased to issue the final Supplemental Environmental Projects (SEP) Policy, the product of almost three years of experience implementing and fine-tuning the 1995 Interim Revised SEP Policy. It is also the product of the cooperative effort of the SEP Workgroup, comprised of representatives of the Regions, various OECA offices, OGC and DOJ. This Policy is effective May 1, 1998, and supersedes the Interim SEP Policy.

Most of the changes made to the Interim SEP Policy are clarifications to the existing language. There are no radical changes and the basic structure and operation of the SEP Policy remains the same. The major changes to the SEP Policy include:

1. Community Input. The final SEP Policy contains a new section to encourage the use of community input in developing projects in appropriate cases and there is a new penalty mitigation factor for community input. We are preparing a public pamphlet that explains the Policy in simple terms to facilitate implementation of this new section.
2. Categories of Acceptable Projects. The categories of acceptable projects have remained largely the same, with some clarifications and a few substantive changes. There is now a new "other" category under which worthwhile projects that do not fit within any of the defined categories, but are otherwise consistent with all other provisions of the SEP Policy, may qualify as SEPs with advance OECA approval. The site assessment subcategory has been revised and renamed to "environmental quality assessments." The environmental management system subcategory has been eliminated.

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U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman